

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION**

**UNITED STATES OF AMERICA**

**v.**

**KIRBY EDMUND PETERSON,**

**Defendant**

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**7:95-CR-20 (WDO)**

**ORDER**

This matter is before the Court on the Defendant's motion to compel the government to file another Rule 35 motion. "[F]ederal district courts may review the government's refusal to file a substantial-assistance motion if the defendant first makes a 'substantial threshold showing' that the refusal was based upon an unconstitutional motive, such as race or religion." United States v. Holland, 2006 WL 172220, No. 04-15680, (11<sup>th</sup> Cir. Jan. 25, 2006). "In the absence of this showing, the defendant has no right to discovery or an evidentiary hearing on this issue." Id. (citation omitted). Defendant would also "be entitled to relief if the prosecutor's refusal to move was not rationally related to any legitimate government interest." Id. Defendant Peterson failed to make a showing of any of these factors and his motion to compel is therefore DENIED.

**SO ORDERED this 16<sup>th</sup> day of March 2006.**

**S/  
WILBUR D. OWENS, JR.  
UNITED STATES DISTRICT JUDGE**